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In The United States Patent And Trademark Office

Patent Number: 09/978,215
Appl. Filed: 10/15/01
Applicant: Luis J. Rodriguez
Title: Self Sealing Letter Sheets
Examiner / GAU: Jes F. Pascua / 3727

Notice of Appeal to The Court of Appeals for the Federal Circuit

Director:

This is to respectfully submit Notice of Appeal under 35 U.S.C. 141 related to the above Application. This Notice is timely submitted as per 37 C.F.R. 1.304, as A Decision on Request for Rehearing was dated Mar. 31, 2005.

Pro-Se Appellant further submitted a new Request for Rehearing concurrently with this paper. A Copy of such request is enclosed.

Respectfully Submitted,


Luis J. Rodriguez

CERTIFICATE OF MAILING

Date of Mailing: April 08, 2005

I hereby certify that this correspondence, including its attachments is being deposited with the United States Postal Service "EXPRESS MAIL TO ADDRESSEE" service # ED 560571471 US under 37 CFR 1.10 on the date indicated above, and is addressed to **DIRECTOR**, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450

Luis J. Rodriguez,
Pro-Se Applicant

Signed: 



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Reply to Paper 46. Request for Rehearing

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

This paper is submitted concurrently with a notice of Appeal to the Court of Appeals for the Federal Circuit, as yet another effort by Pro-Se Appellant to obtain a responsive answer from the Office regarding this case.

Whether or not this paper may receive or in fact will receive any consideration by the Board or any authority at the Office at this point is unknown to Pro-Se Appellant. However, this paper summarizes Pro-Se Appellant's position about the Board's Decisions and about the prosecution of this case.

Appellant respectfully submits that the Decision on Appeal and the Decision on Request for Rehearing are of no legal effect as they rely on:

- I. A False Supplemental Answer by the Second Examiner of this case, which is further in violation of the Board's remand as discussed below.
- II. A False Interview Summary by Original Examiner of this case as discussed below.
- III. A very large number of misinterpretations or inaccuracies (practically, all items in Paper 46 are affected by this), and also a number of items in the Request for Rehearing that were

unexplainable avoided, as discussed below.

IV. The continued disregard for any and all of the arguments in Reply Brief and Supplemental Appeal Brief by Appellant. These papers simply have not been addressed at all by any PTO's Officer, in flagrant disregard for the law.

Therefore, Appellant once again respectfully Requests a Rehearing of the above Appealed case.

I. Examiner's supplemental answer contains several false statements in grave detriment of Appellant's rights, as pointed out by Appellant's Supplemental Reply. Examiner's supplemental answer is in violation of the Board's specific instructions as pointed out by Appellant's Supplemental Reply. Examiner's supplemental answer is further deceiving by trying to fool the Appeal process into believing that identically duplicated text from Examiners answer was in response to Appellant's disputes as instructed by the board when in fact it was that very text that prompted the disputes. Examiner did not fool Appellant.

Why is the Board completely indifferent to the violation of the remand and its specific, clear instructions? Alternatively, why then, did the Board remand the case?

II. Examiner's Interview Summary of Nov. 1, 2002 is a false document. Examiner lies by assertion (*assertio falsi*) and by omission (*suppressio veri*). Examiner says that all claims were discussed. That is a false statement. Only claims 50 and 68 were discussed. Examiner says that no exhibit was shown. For all practical purposes, the Exhibits were shown, as Appellant requested Examiner to look at the Exhibits, which were in Examiner's possession. If Box 'E', was insufficient to explain this item of the interview, Examiner could have elaborated in the report. However, Examiner completely failed to discuss this critical point of the interview, amounting to another lie by omission.

The falsehood of the Examiner's report is clearly proven by his failure to contest Appellants report of the interview, which is a diametrically opposed account of it.

Summary of Interview by Applicant also points to clear evidence in the record of Examiner's

arbitrariness.

III. Paper 46 is not responsive about the overlooked Reply Brief and Supplemental Reply Brief. Confronted about the silence regarding these issues, the Board unexplainably continues its silence and simply offers assurances and assertions that they were reviewed and considered, pointing to a footnote where the documents are incidentally mentioned, claiming that such mention is evidence of their review and consideration.

Appellant pointed first to the same footnote as evidence that the Board knows about their existence, because that is all that it proves. And then the question raises itself: Why were they not thoroughly addressed?

This and other issues in paper 46 are discussed in further detail below. The arabic numbering of sections corresponds with the roman numbering of sections in paper 46 by the Board.

As a preface to more particulars, Appellant submits that Paper 46 is thoroughly vague and unresponsive. Instead of addressing one single issue raised in Request for Rehearing, it consistently refers to Boards statements in decision of January 28, 2005, which were in fact what prompted the Request for Rehearing. This communication style is the reason that this case has been so excessively long and so excessively unjust.

1. SECTION I

Paper 46 states that Appellant stated that the Board has not considered the Supplemental Brief.

Appellant never made such a statement.

Appellant clearly stated and now re-states that "It is **apparent** that the Board never considered Supplemental Brief submitted by Appellant on July 28, 2004" (First sentence of section 1. on page 1)

Appellant further stated in no uncertain terms that: **"It is established that it [the Supplemental Brief] was never addressed"**

This again is one of the issues that has vitiated this Appeal and which makes the Decision of January 28, 2005 and refusal to grant Rehearing of no legal effect.

Regarding the exclusion of Reply Brief and Supplemental Reply Brief in the 'Preliminary Matters' section, Paper 46 suggests that Appellant proposed the conclusion "Therefore must not have been considered"

Appellant never used such language. Appellant clearly submitted and again submits facts as facts.

The rebuttal arguments, and issues raised in those documents were not addressed. That is an established fact. Now, the question begs itself: Why?

The copies attached to paper 46 only prove that the papers were received.

Appellant needs no proof that the papers were received. Appellant perfectly well knows that the papers were delivered as evidenced by USPS Express Mail confirmations and by USPTO stamped postcards.

The question was: Did the papers go to their final destination within the PTO? Appellant has more than enough reasons to wonder. Something funny happened to paper 42 of this case. Please see <http://www.geocities.com/pto3700/978215>.

Now that the question as to whether or not the Board has had access to such documents is mooted, the really relevant question is: Why was there no response to any of the arguments in these documents in the decision of January 28? Why Paper 46 did not address any of the many rebuttal arguments and issues raised in that document.

A Request for Rehearing pointed out that these entire documents have been overlooked, yet paper 46 is consistently indifferent to such critical point.

Paper 46 states that the "Preliminary matters" section was intended to clarify misunderstandings.

With the highest respect, Appellant submits that this is not what the Decision of Jan. 28, 2005 stated. The decision clearly and unequivocally states, in a conclusive fashion: "In this context, we therefore review the supplemental examiner's answer of paper No. 40, mailed July 20, 2004." This is very intriguing. Especially since something funny happened to the paper issued by Examiner after paper 40. (paper 42). The paper between paper 42 and paper 40 is clearly the Supplemental Reply Brief for which no response at all has been produced.

Appellant further submits with the highest respect that the notion proposed by paper 46 that such "Preliminary Matters" section was intended to clarify misunderstandings, does not make sense as it left out very, very important rebuttal documents. That seems to generate misunderstandings, instead of clarifying them.

2. SECTION II

Paper 46 states that Appellant asserts that 'these documents have "disappeared"'.

Appellant never made such assertion.

Appellant very clearly stated that:

"Appellant **suspects** that the reason that Reply Brief and Supplemental Reply Brief are not discussed **could** simply be the fact that just like Supplemental Brief before, they have "disappeared" before the Board could review them." *[Emphasis added]*

Appellant respectfully submits that Appellant is even more persuaded of that possibility now.

Paper 46 states that "appellant states that after reading our decision mailed January 28, 2005, that he re-read the Decision on Petition of June 2, 2003, and now understands **why** certain amendments, attachments and exhibits were not considered by the Examiner,

persuant to the intructions set forth..." *[Emphasis added]*

Appellant never made such a statement.

It is puzzling how paper 46 can make such misinterpretation of such a clear and simple statement.

Appellant clearly stated: "After reading the Decision on Appeal of Jan. 28, 2005, Appellant re-read the decision on Petition of June 02, 2003, and Appellant now correctly understands that not all of the attachments and Exhibits related to Amendment C are in the record."

The misquoting by Paper 46 unfairly suggests that Appellant supports any of the Examiner's actions or inactions, when in fact it is completely and categorically the opposite.

Paper 46 states that "Appellant also states that Amendment C remains in "full force"." and goes on to make some unnecessary clarifications.

Appellant never made such unqualified statement.

Appellant clearly stated: ..."Amendment C is in full force regarding the Appealed claims" *[Emphasis added]*

And Appellant again submits that Amendment C is in full force regarding Appealed claims.

3. SECTION III

Paper 46 states that "Appellant states that the model of Exhibit A has been entered, and this proves the untruthfulness of the Examiner's interview"

Appellant never made such a statement.

Appellant stated and again states that the falsehood of Examiners Interview Summary is proven by his failure to dispute Appellant's Summary of Interview, which reports a completely different account of events. Again, Examiner produced a false Interview

Summary, both by providing false statements and by omitting important issues discussed during the interview. His silence about Appellant's summary is conclusive proof of it.

Since Paper 46 misinterprets Appellant's statements, It is also pertinent to now assert that yes the fact that Examiner failed to report the discussion of the Model and Appellants Requests that it be compared to models of alleged prior art constitutes another incidence of 'suppressio veri', i.e. a lie by omission. Additionally, it is also reiterated, that for all practical purposes, the request that Examiner compared the previously submitted models, already in his possession amounts to a showing of them. How else can the models be shown in a telephonic interview?

Paper 46 suggests that Appellant misunderstands Box e. on page 1 of Examiner's Interview Summary.

Appellant has no confusion about Box e at all. Appellant clearly understands that failure to report at all the discussion of the models is a lie by omission. And furthermore, that yes, for all intends and purposes there was a show of the invention during the telephonic interview upon Appellant's request that models in Examiners possession be compared. Again, for all practical purposes, this makes the answer to item e. suggesting that no Exhibit was shown a lie by assertion, and a lie in a signed public document.

4. SECTION IV

Paper 46 again offers unsubstantiated, unsupported assurances that Reply Brief and Supplemental Reply Brief by Appellant were considered. Appellant respectfully submits that these assurances carry no significance, as there is not one single argument, issue raised or evidence submitted therein that is at all addressed and much less replied to by the Board.

Regarding the issue raised by Appellant about the new rationales by new Examiner, amounting to new rejections, Paper 46 again submits the Boards previous position, without responding to Appellants disputes that::

The basic thrust of the invention does not remain the same, prosecution was closed, appellant did not have a fair opportunity to respond etc. (See page 6 of Supplemental Appeal Brief page 6, starting about middle of page) This is further corroborated by new Examiner when new Examiner states that these reasons were submitted to "buttress" reasons by original Examiner. How is it then, that all the reasons by original Examiner have completely disappeared?

Paper 46 states that "any allegation that an Examiner's answer contains an impermissible new ground of rejection is waived if not timely raised by way of petition under 37 CFR 1.181 (a).

In the specific circumstances at hand, (*i.e., a case under appeal*), this is incorrect.

At the moment that new rationales for the rejection, amounting to new rejections were submitted by new Examiner, Prosecution was Closed and the Director had no jurisdiction over it. It was the Board who had jurisdiction, and it was the Board who failed to address the issues raised by Appellant.

5. SECTION V

Paper 46 refers to previously submitted assurances that the Reply brief and that the Supplemental Reply Brief were addressed. Appellant respectfully submits that these assurances have no legal meaning since they are not supported by an actual discussion of the arguments and evidence submitted or the issues raised therein.

Any possible significance of such assurances is further reduced by the fact that they have a self serving effect.

Appellant further submits with the highest respect that a Request for Rehearing is not to re-argue the case. Request for Rehearing is to indicate "with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which rehearing is sought".

In justifying its decision of January 28 the Board appears thoroughly diligent in addressing all the numbered paragraphs related to the issues overlooked as presented in the 9 pages of the Request, and submits some arguments. Independently from any actual completeness and responsiveness—which are disputed by Appellant—that these arguments may or may not carry, Paper 46 offers some explanations.

What paper 26 fails to recognize is the fact that Reply brief and Supplemental Brief were both completely overlooked in the decision of January 28, as reported in paragraphs 1, 2, 4, 5 and 8 (ix.) of the Request for rehearing; and that Reply Brief is made of 24 pages and Supplemental Brief is made of 7 pages, and that they all merit the same attention that the paragraph by paragraph discussion of the text in the Decision of Mar. 31 to the 9 pages of the Request for rehearing suggests.

(Again, Appellant categorically contends the completeness or responsiveness of such explanations, but that is another issue, which is point by point debated in other parts of this paper)

The question begs itself: Why the continued, systematic silence about Reply Brief and Supplemental Brief?

6. SECTION VI

Paper 46 denies confusion regarding Exhibit A and Affidavit 4. This is actually trivial, but the Decision of January 28, 2005 did confuse Exhibit A with Affidavit 4. See page 3, 3rd paragraph, last 4 lines. Appellant simply offered the correction for the record.

7. SECTION VII

Paper 46 again invokes Board's previously submitted position instead of offering a response to Appellant's dispute of such position, i.e. that the basic thrust of the invention does not remain the same, prosecution was closed, appellant did not have a fair

opportunity to respond etc. (See page 6 of Supplemental Appeal Brief page 6, starting about middle of page)

Paper 46 misportrays Appellants positions about the "New Rejections" issue. Appellant does not contend that the new rejections are so because Examiner Pascua offered new rejections. Appellant clearly and repeatedly indicates that the rationales supporting the rejections are new rationales, and that this amounts to new rejections.

Again the inadmissible duality of rejections is confirmed by the new Examiner's contention that these reasons were submitted to "buttress" reasons by original Examiner. How is it then, that all the reasons by original Examiner have completely disappeared?

The Board again submits the incorrect notion that a perceived new rejection during Appeal is petitionable matter. This is alarmingly troubling. Especially since this is the second time this so gravely incorrect concept is submitted in paper 46. Sadly there will be a third mention of this, later on.

8. SECTION VIII

Paper 46 (starting on page 8) makes perfectly clear that the Board misapprehends the invention. It also makes clear that the Board misapprehends the Request for Rehearing.

Paper 46 states that "Appellant alleges that there is confusion about the claimed invention by the Board because the Board refers to Figure 7a and no other figure"

This is incorrect. Appellant never stated such a thing. It is hard to understand how Appellant's clear statements could have been so badly misinterpreted.

This is a very, very critical and very, very simple thing that needs to be clearly understood.

Paper 46 has unequivocally and emphatically stated that in the context of the first embodiment, it has examined the claims considering more than FIG. 7A. The Board

defensively states that it has also considered Figs. 7b-7f.

That is where the problem resides. Again:

In first embodiment, Fig. 7a is the only figure that illustrates the invention.

Figs 7b-7f illustrate how to use the invention, after the claimed product was produced, as patent law requires that the specification must teach how to use the invention.

35 U.S.C. 112 Specification.

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

All Figures in this Application are an illustration of a written description. And all this written description does is to teach: a) How to make the invention (Fig. 7a in first embodiment), and b) How to use the invention (Figs. 7b-7f) as required by law.

This very simple issue is extremely important. This issue further presents a serious and meaningful contradiction between the Board's claim that it has examined and considered the model, and its emphatic assurance that it considers Figs. 7b-7c as part of the claims. It is again noted that no claim in this application is a "Method" claim. All claims are product claims, and that as such, steps of use are not necessary, and if recited, they have no effect on the claim interpretation. Model of invention does not show any of aspects shown by Figs. 7b-7f. How is it possible that the Board can sustain that:

- A) it understands the invention and that
- B) It has examined the model

It is one or the other, but Board claims both.

It is also noted that Paper 46 does not reply to Request to examine pages 28-30 of Amendment C ("What the Invention Is" and "How to use the Invention". Therefore,

Appellant respectfully points the Board once again to those pages on Amendment C.

On page 10, first para. Paper 46 states that "Appellant reiterates his assertion that the Examiner raised a new ground of rejection by discussing the mono-sectional body of Schieman."

This is incorrect in every respect:

1. This is not what Appellant stated. Appellant clearly stated that

Examiner is "Suggesting with the word maintains that such theory [*that Schieman's body is mono-sectional to the degree that the body is formed from a unitary sheet of material*] was ever submitted during prosecution, when in fact this never happened. Appellant categorically characterized earlier in that very paragraph this misrepresentation for what it is: yet another manifestation of the dishonest quality of the Office's examination.

2. The statement by Appellant that "Prosecution is closed and this is a new rejection" in light of all the previous statements in Request for rehearing, clearly means that the new rationale amounts to a new rejection, after the prosecution was closed, because that is what it is.

3. Appellant respectfully submits that the statement by the Examiner, supported by the Board that Schieman's body is mono-sectional is simply a defiance of common sense. It is simply absurd to claim that the body of an envelope has only one section. By definition, a section is a division of a unit. Hence, by definition a mono-sectional unit is a unit that can not be divided in more than one (mono) section. Schieman's body or any envelope's body can be separated into at least four sections. Please, go to the entered model of the present invention and count all the sections of the body. This obviously excludes the flap, which is the flap. There is only one section in this invention's body.

Additionally, paper 46 fails to address the last paragraph of item 8, iii, of Request for Rehearing stating: "Please see Reply Brief, Page 15." So Appellant again refers the Board

to page 15 of Reply Brief.

Paper 46 offers for the third time the incorrect contention that an impermissible new rejection is a petitionable matter, losing sight of the fact that this case was under appeal when such impermissible new matter occurred, and that therefore the case is solely under the jurisdiction of the Board, not the Director.

Again, Request for Rehearing is NOT to argue the case. We are not in a prosecution phase. Pages 11 and 12 of paper 46 seem to engage in arguments, and worse yet, repeated arguments, instead of offering responses to questions pointing to overlooked or misapprehended items which were raised by Appellant in the Request for Rehearing

Appellant has exhaustively argued his case via a regular examination, continued examination and several rounds of appeals over a period of almost 4 years. Examiner Garbe, Examiner Pascua and the Board have failed to address the arguments submitted in those documents, which have been summarized in the Appeal Brief, Reply Brief, Supplemental appeal Brief and Request for Rehearing related to this and all other issues, which have been consistently ignored by the Board.

Paper 46 is selective of the issues it addresses in item 8 of Request for Rehearing.

Paper 46 trivializes point ii in section 8, by focusing in the marginal issue of the "new rejection", which has already been addressed, while it fails to address the substance of this point which is that:

(whether it is a new or old rejection) the body of an envelope is made of several overlapping sections, which further comprise at least two layers of glue to keep the sections in assembled condition, which in themselves constitute additional sections, and then the contradicting fact that even such inherently false notion is accepted as valid, Examiner's theory that the body of an envelope is "monosectional" because it is originated from a sheet material, is otherwise disproved by the fact that such sheet material also produces the flap(s), whereby the body of the envelope is reduced to a fraction of a

section of the envelope, and hence such body is not "mono-sectional, but rather "semi-sectional". The Board can not have it both ways.

Paper 46 also avoids point v. of item 8, indicating that "if the issue is that the drawings show score lines, then the issue may merit a drawing objection, not a claim rejection" and other important arguments. Why?

Paper 46 also trivializes point vii of section 8 of Request for Rehearing, by addressing something already addressed and avoiding the statement that:

"No individual artisan can be more representative of 'one skilled in the art' than the whole industry and the whole market segment of that industry. The definitions of the Industry and market of the field of the invention and the cited references (alleged prior art) have been clearly defined for the public (for generations) in the packaging of their products, as follows:

- ▶ The packaging of a Ream of paper says **500 SHEETS**.
- ▶ A Box of envelopes says: **ENVELOPES** - XYZ Count, Wherein XYZ indicates the number of pieces in the box.

Please, verify this statement. There is no need to get out of the Office (or Building) for this."

"Paper 46 also avoids point viii of section 8, stating:

Board also misapprehends the simple fact that an envelope is a container, just like a box, and that just like a box, which is also generated from one single sheet, an envelope can not preclude the instant invention due to their radical and categorical structural differences." Why?

CONCLUSION

Paper 46 was not responsive to the overlooked and misapprehended issues as pointed by Appellant's Request for Rehearing. Therefore, a rehearing is again respectfully requested.


Luis J. Rodriguez

-----Pro-Se Appellant-----

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Luis J. Rodriguez,

Pro-Se Applicant

Signed:.....

